

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et. al,

Index No. 11 Civ. 5845 (LTS)(JCF)

Plaintiffs,

**DECLARATION OF
YVONNE PRITCHETT**

-against-

CITY OF NEW YORK, ET AL.,

Defendants.

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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF CORRECTIONS,

Defendants.

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YVONNE PRITCHETT declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746,
that the following is true and correct:

1. I am the Deputy Commissioner of Use of Force Investigations Division (“ID”) with the New York City Department of Correction (“DOC”).

2. In that role, I oversee investigations of members of service engaged in Use of Force incidents. I also act as liaison with other outside investigative agencies, including the Department of Investigation and the Bronx County District Attorney’s Office.

3. I have 25 years of experience as a lawyer, having served as a Senior Trial Attorney in Kings County, a member of the Kings County Assigned Counsel Plan (18-B) Criminal Panel, and a Court Attorney to a Supreme Court Justice and a Civil Court judge. I began my career with

DOC in 2019 as an attorney in the Trials Division. In February 2022, I was appointed Acting Deputy Commissioner of ID and in August 2022, Associate Commissioner of Trials. In April 2023, I was appointed to my current position.

4. At DOC I have collaborated closely with the Monitoring Team in my various capacities, and our working relationship has been sustained through open and honest communication.

A. Function of the Investigation Division

5. ID's sole focus is Use of Force (UOF) incidents. The Use of Force Investigation Division is responsible for the independent review of all actual and alleged uses of force ("UOF") incidents from reports made to DOC's Central Operations Desk ("COD").¹ ID also receives complaints from various sources: the Legal Aid Society; Constituent Services; the Department of Investigation ("DOI"); the State Department of Corrections and Community Supervision; the Board of Correction ("BOC") and anonymous reports.² ID is then tasked with conducting fair and impartial investigations to ensure that its disciplinary recommendations are in accordance with DOC policy. All actual and alleged uses of force investigations are independently reviewed by an investigatory team. The team is responsible for reviewing all available evidence, to wit: the COD report; Person(s) in Custody statements; Injury to Inmate Reports; Use of Force Reports, Use of Force Witness Reports; Incident Reports; and video surveillance footage; and any other relevant evidence.

¹ An actual use of force is one that is affirmatively reported by a member of service. An alleged use of force is one reported by an individual in custody or a 3rd party, such as an attorney.

² If a report is not related to an actual use of force, it is reported as an alleged incident.

6. ID is divided into an Intake unit and a Full Investigation Unit.³ The Intake Unit reviews all use of force incidents and has 25 business days to complete its investigation. At the conclusion of the investigation, the case is either closed without action (the officer's conduct was not inappropriate), closed with action (the officer's conduct was inappropriate), or referred for a full investigation.⁴ To achieve the goal of immediate and meaningful staff accountability for egregious use of force incidents, ID leadership increased the Intake Unit's Rapid Review team from one to two teams the week of April 30, 2023. The purpose of the Rapid Review Teams is to review incidents daily for possible immediate action and also identify use of force incidents involving the Emergency Response Team and the Strategic Response Team at the request of the Federal Monitor. The Rapid Review teams conduct the initial reviews and assign the investigations to the Intake Unit teams.

7. A review of our databases show that approximately nine percent of UOF incidents that took place in 2023 were referred to Full ID.

³ In compliance with the Nunez Orders, ID has maintained an Intake Investigation Unit: the Department shall continue to operate the recently created "Intake Investigation Unit," which shall be responsible for conducting investigations of Use of Force Incidents and determining whether Full ID Investigations are required ("Intake Investigation"). The Intake Investigation Unit shall collaborate with Trials Division attorneys on Intake Investigations. Because the Intake Investigations will replace Preliminary Reviews and Facility Investigations and will involve certain Use of Force Incidents that previously required Full ID Investigations, certain provisions of the Consent Judgment shall be modified as outlined in Paragraph E.1 below. i. The Department, in consultation with the Monitor, shall develop, adopt, and implement a policy that sets forth the process for conducting Intake Investigations ("Intake Investigation Policy") for members of the Intake Investigation Unit. The Intake Investigation Policy shall be subject to the approval of the Monitor First Remedial Order, Section B (2)-2(i), Dkt. 350 (August 14, 2020).

⁴ When an investigation is closed with action, the action can include the generation of a Memorandum of Complaint ("MOC"), a request for retraining, or a facility referral for corrective action. An MOC is a referral to the Trials and Litigation Division ("Trials").

8. Full ID investigations are required when a head strike is involved, serious injury to staff or an incarcerated individual has occurred,⁵ or due to the complexity of the incident.⁶ After a thorough investigation, Full ID may close the investigation with action (see footnote 4) or no action.

B. Timeliness of Full ID Investigations

9. Prior to October 1, 2018, Full ID investigations were required to be completed within 180 days. Full ID Investigations are now required to be completed within 120 days.⁷ Between January 1, 2023 and December 31, 2023, 494 Full ID investigations were closed. 182 (37 percent) of those investigations were closed within 120 days. ID is working to increase staffing levels to improve the timeliness of these investigations.

10. Following my appointment, the monitoring team identified approximately 1,000 incidents handled under prior ID leadership supervision for additional review. We negotiated the

⁵ The Use of Force Directive (5006R-D.IV.G) defines a Class A Use of Force, which requires a Full ID investigation, as one that requires medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including those resulting in one or more of the following treatments/injuries: multiple abrasions and/or contusions, chipped or cracked tooth, loss of tooth, laceration, puncture, fracture, loss of consciousness, concussion, suture, internal injuries (e.g., ruptured spleen, perforated eardrum, etc.), or admission to a hospital.

⁶ The Nunez First Remedial Order, Exhibit A, at page 3: “The Intake Investigation Unit shall promptly refer any Use of Force Incident to ID to conduct a full investigation (“Full ID Investigation”) upon a determination that...c. It is necessary to conduct interviews of Staff Members to complete a thorough investigation and determine whether Staff engaged in excessive or unnecessary Use or Force or otherwise failed to comply with the New Use of Force Directive; d. Due to the complexity of the incident or investigation, the nature of the conduct at issue, or the evidence collected, it is necessary to conduct further investigative steps to complete a thorough investigation and determine whether Staff engaged in excessive or unnecessary Use or Force or otherwise failed to comply with the New Use of Force Directive.

⁷ All Full ID Investigations shall satisfy the following criteria: a. *Timeliness*. 1. Beginning on the Effective Date and for three years following the Effective Date, or until October 1, 2018, whichever is earlier: 1. ID shall complete all Full ID Investigations by no later than 180 days from the date the Use of Force Incident was referred told (“Referral Date”), absent extenuating circumstances outside the Department’s control that warrant an extension of this deadline. Any extension of the 180-day deadline shall be documented and subject to approval by the DC ID or a designated Assistant Commissioner. Any Full ID Investigation commenced after the Effective Date that is open for more than 180 days shall be subject to monthly reviews by the DC ID or a designated Assistant Commissioner to determine the status of the investigation and ensure that all reasonable efforts are being made to expeditiously complete the investigation. Consent Judgement, Section VII(9)(a)(i-ii), Dkt. 249 (October 21, 2015).

parameters for review with the Monitoring Team and agreed to review 476 cases. ID Leadership completed this review by the agreed upon August 31, 2023 deadline. Of the 476 investigations reviewed, approximately 160 investigations were re-opened.

11. Upon my appointment in April 2023, the Use of Force Investigation Division Leadership has made reasonably diligent efforts to comply with the provisions of the Consent Judgment. The Use of Force Investigation Division Leadership developed a plan for improving the use of force investigations, adopting the Monitoring Team's suggestions while incorporating several additional initiatives.⁸

12. The additional initiatives included monthly staff meetings where we emphasized the importance of investigations being thorough, fair, and objective – “without fear or favor”. At these monthly meetings, our training unit has conducted interactive learning sessions in evidence preservation, self-injurious behavior, video preservation requirements, and completing complaint referral worksheets. ID Leadership also conducted reviews of the Use of Force and Chemical Agents Directives. We have retrained staff on best practices in conducting interviews. Full ID and Intake Deputy Directors and supervisors provide active supervision to the investigators. Since April 2023, the Director of Full ID reviews and provides guidance on the investigative actions that should be taken when investigations are upgraded to Full ID and when assigning investigations.

13. In its December 22, 2023 Report, the Monitor observed that the Intake Unit was now closing 99 percent of the cases that it receives in 30 business days.⁹ As noted, the established deadline is 25 business days.

⁸ Monitor's Status Report filed April 24, 2023, pp. 5-6. Dkt. 520.

⁹ December 22, 2023 Monitor's Report, page 35. Dkt. 666.

C. Reviews and Quality Assurance

14. ID has established quality assurance teams in Intake and Full ID, in March 2023 and April 2023 respectively, to review completed investigations. The purpose of the Quality Assurance Team is to audit use of force cases to assess the adequacy of the investigations and improve the overall quality of the investigations. A three-person team in Intake reviews 30 randomly selected investigations each week that were closed with no action or returned to the facilities for corrective action. This is approximately 28 percent of a week's cases.¹⁰ From March 2023 to February 2024, follow-up action (e.g., additional witness interviews) was recommended in 32 percent (353 out of 1112) of the intake investigations reviewed.

15. For the Full ID quality assurance, the Director of Full ID reviews as many as a third of the cases closed without charges. In the past three months, the Full ID Director reviewed 40 percent of the investigations that were closed with no charges (nine of 22). The Director reviews the complete file to ensure that a thorough investigation was conducted and that the investigation was appropriately closed. If an investigation was not appropriately closed, a meeting is held with the assigned team to discuss the deficiencies, and further investigative actions are taken. Since the inception of the Full ID quality assurance reviews, further investigative actions were warranted in 15 percent of the investigations reviewed (seven of 46).

D. Staffing

16. ID is required to have 85 investigators and 21 supervisors. At present, we have 77 investigators and 18 supervisors. The count of investigators is down due to attrition and the

¹⁰ This figure is the average of intake investigations over a two-month period that were closed with no action (approximately 28 percent). An updated review over a six-month period of intake investigations that were closed with no action revealed that approximately 27 percent of intake investigations are reviewed.

promotion of five investigators to supervisor positions. Recruitment is on-going. In December 2023, for example, 18 interviews for investigations were scheduled; eight individuals appeared for interviews; three were recommended for hire; and two of the three accepted the offer. We will shortly begin the process of scheduling investigator interviews for the remaining available positions. Over the upcoming weeks, interviews for a supervising investigator will be conducted.

Dated: New York, New York
March 14, 2024



Yvonne Pritchett

